

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LEANNE FRIDDLE,)	
)	No. CV-05-0089-MWL
Plaintiff,)	
)	ORDER GRANTING DEFENDANT'S
v.)	MOTION FOR SUMMARY JUDGMENT
)	
JO ANNE B. BARNHART,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	

BEFORE THE COURT are cross-motions for summary judgment, noted for hearing without oral argument on November 21, 2005. (Ct. Rec. 12, 15). Plaintiff Leanne Friddle ("Plaintiff") filed a reply brief on October 27, 2005. (Ct. Rec. 17). Attorney Maureen Rosette represents Plaintiff; Special Assistant United States Attorney Jeffrey H. Baird represents the Commissioner of Social Security ("Commissioner"). The parties have consented to proceed before a magistrate judge. (Ct. Rec. 7). After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment (Ct. Rec. 15) and **DENIES** Plaintiff's Motion for Summary Judgment (Ct. Rec. 12).

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JURISDICTION

On May 10, 2002, Plaintiff filed applications for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI") benefits, alleging disability since February 27, 2002, due to migraine headaches with black outs, stiff neck muscles, vomiting, loss of hearing, and sensitivity to light and sound. (Administrative Record ("AR") 61-63, 73, 299-302). The applications were denied initially and on reconsideration. On October 21, 2003, Plaintiff appeared before Administrative Law Judge ("ALJ") Mary B. Reed, at which time testimony was taken from Plaintiff, medical expert Arthur B. Craig, M.D., and vocational expert K. Dianne Kramer. (AR 325-392). On April 28, 2004, the ALJ issued a decision finding that Plaintiff was not disabled. (AR 18-31). The Appeals Council denied a request for review on February 4, 2005. (AR 6-10). Therefore, the ALJ's decision became the final decision of the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review pursuant to 42 U.S.C. § 405(g) on March 29, 2005. (Ct. Rec. 1).

STATEMENT OF FACTS

The facts have been presented in the administrative hearing transcript, the ALJ's decision, the briefs of both Plaintiff and the Commissioner and will only be summarized here. Plaintiff was 39 years old on the date of the ALJ's decision. (AR 29).

At the administrative hearing held on October 21, 2003, Plaintiff testified that she stands approximately 5'4" tall and weighs about 217 pounds. (AR 343). She stated that she weighed 127 pounds two years prior to the hearing and had gained the

1 weight as a result of her medications. (AR 343). She indicated
2 that she completed high school and two years of college, but had
3 not obtained a college degree. (AR 347). Plaintiff reported that
4 she was currently enrolled in college, taking two hours of classes
5 each day, and studying accounting law and criminal law. (AR 347-
6 348). She stated that 13 years prior to the hearing she had used
7 street drugs, including acid, cocaine, heroin, marijuana and
8 methamphetamines, but had been clean and sober for the last 13
9 years. (AR 331-332). She used these street drugs for "a good
10 five years." (AR 331).

11 Plaintiff testified that she was involved in a 1987 motor
12 vehicle accident for which she was hospitalized for "a good week."
13 (AR 329, 356, 358). The accident resulted in injury to the left
14 side of her face and left her unconscious, off and on, between the
15 time of the accident and until she arrived at the hospital. (AR
16 356-357).

17 Plaintiff testified that she had experienced seizures, two to
18 three times a week, for approximately six or seven months in 2001.
19 (AR 329). She stated, however, that she had not had a seizure
20 since 2001. (AR 329). Plaintiff explained that when she had a
21 seizure, she would lose consciousness for two to three hours at a
22 time. (AR 330-331). The seizures were preceded by a migraine
23 headache and fever. (AR 329). She later indicated that she had
24 experienced seizures as a child, but did not have a seizure from
25 age five until 2001. (AR 380).

26 Plaintiff testified that she last worked on February 27,
27 2002. (AR 332). She reported that she could not continue to work
28 because she would experience migraine headaches which caused her

1 to pass out, and she could no longer stand for a long period of
2 time. (AR 333). Plaintiff described passing out as her neck
3 would go numb, she would lose her hearing, everything would turn
4 black, and she would collapse to the floor. (AR 334). She was
5 informed that she would be unconscious for 30 to 45 minutes at a
6 time. (AR 334). Plaintiff stated that she was experiencing these
7 pass out spells four times a week, over a span of a couple of
8 months. (AR 334). She testified that she last passed out in
9 early 2003, and, between the time she stopped working in February
10 of 2002 and the start of 2003, she had passed out "hardly at all."
11 (AR 335). She indicated that she had passed out a total of two
12 times since she stopped working in 2002. (AR 336).

13 Plaintiff last worked as a cashier in a convenience store for
14 about one year. (AR 349-350). She also worked as a hotel
15 housekeeper, a video rental store clerk, an office, business, and
16 university janitor, and an apartment cleaner, in addition to other
17 work as a cashier at various convenience stores. (AR 351-354).

18 Plaintiff testified that she has headaches one to four times
19 per week, lasting up to an entire day. (AR 358). She reported
20 difficulty with sleep (AR 360-361), and difficulty going up and
21 down stairs (AR 363). She stated that she has had swelling in her
22 feet, left hand and face for the past two to three months. (AR
23 349, 361-362). Due to the swelling in her feet, she is able to
24 sit in a chair for only one hour before having to get up and walk
25 around, can stand for only 30 to 45 minutes at a time and walk
26 only about two block in one stretch. (AR 362-363). Because of
27 the swelling, Plaintiff stated that she elevates her feet 12 to 14
28 hours per day. (AR 363). Before being affected by the swelling

1 in her feet, she testified that there was no reason why she could
2 not have sat for an hour or more and she was not otherwise limited
3 in standing, walking or climbing stairs. (AR 369-370). She
4 indicated that she can lift and carry less than five pounds
5 because of pain in her hands and back and running out of breath
6 easily. (AR 364). Prior to her hysterectomy, seven months before
7 the administrative hearing, she reported she was capable of
8 lifting up to eight pounds, but did not have the stamina to lift
9 more and lifting more would make her shoulders ache. (AR 367).

10 Plaintiff testified that she also has asthma, which is
11 triggered by smoke, dirt and pollen, but her asthma is not always
12 a problem and she is able to get by using only one inhaler over a
13 span of one to two months. (AR 365). She mentioned that her
14 depression was well controlled with the new medication she had
15 been prescribed, Effexor. (AR 366).

16 Plaintiff testified that she has friends assist her with
17 housework and grocery shopping. (AR 364). She did not have any
18 hobbies (AR 366), instead spending her time lying in bed in the
19 evenings studying for her classes (AR 365). However, she
20 indicated that prior to her problems with swelling in her feet,
21 she cooked, did the housework, went shopping, went on five to six
22 mile bike rides, played tennis, swam and danced. (AR 377-378).

23 Medical expert Arthur B. Craig and vocational expert K. Diane
24 Kramer also testified at the administrative hearing held on
25 October 21, 2003. (AR 336-342, 381-390).

26 SEQUENTIAL EVALUATION PROCESS

27 The Social Security Act (the "Act") defines "disability" as
28 the "inability to engage in any substantial gainful activity by

1 reason of any medically determinable physical or mental impairment
2 which can be expected to result in death or which has lasted or
3 can be expected to last for a continuous period of not less than
4 twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The
5 Act also provides that a Plaintiff shall be determined to be under
6 a disability only if his impairments are of such severity that
7 Plaintiff is not only unable to do his previous work but cannot,
8 considering Plaintiff's age, education and work experiences,
9 engage in any other substantial gainful work which exists in the
10 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).
11 Thus, the definition of disability consists of both medical and
12 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156
13 (9th Cir. 2001).

14 The Commissioner has established a five-step sequential
15 evaluation process for determining whether a person is disabled.
16 20 C.F.R. §§ 404.1520, 416.920. Step one determines if he is
17 engaged in substantial gainful activities. If he is, benefits are
18 denied. 20 C.F.R. §§ 404.1520(b), 416.920(b). If he is not, the
19 decision maker proceeds to step two, which determines whether
20 Plaintiff has a medically severe impairment or combination of
21 impairments. 20 C.F.R. §§ 404.1520(c), 416.920(c).

22 If Plaintiff does not have a severe impairment or combination
23 of impairments, the disability claim is denied. If the impairment
24 is severe, the evaluation proceeds to the third step, which
25 compares Plaintiff's impairment with a number of listed
26 impairments acknowledged by the Commissioner to be so severe as to
27 preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(d),
28 416.920(d); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment

1 meets or equals one of the listed impairments, Plaintiff is
2 conclusively presumed to be disabled. If the impairment is not
3 one conclusively presumed to be disabling, the evaluation proceeds
4 to the fourth step, which determines whether the impairment
5 prevents Plaintiff from performing work he has performed in the
6 past. If Plaintiff is able to perform his previous work, he is
7 not disabled. 20 C.F.R. §§ 404.1520(e), 416.920(e). If Plaintiff
8 cannot perform this work, the fifth and final step in the process
9 determines whether Plaintiff is able to perform other work in the
10 national economy in view of his residual functional capacity and
11 his age, education and past work experience. 20 C.F.R. §§
12 404.1520(f), 416.920(f); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

13 The initial burden of proof rests upon Plaintiff to establish
14 a *prima facie* case of entitlement to disability benefits.
15 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v.*
16 *Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
17 met once Plaintiff establishes that a physical or mental
18 impairment prevents him from engaging in his previous occupation.
19 The burden then shifts to the Commissioner to show (1) that
20 Plaintiff can perform other substantial gainful activity and (2)
21 that a "significant number of jobs exist in the national economy"
22 which Plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498
23 (9th Cir. 1984).

24 STANDARD OF REVIEW

25 Congress has provided a limited scope of judicial review of a
26 Commissioner's decision. 42 U.S.C. § 405(g). A court must uphold
27 the Commissioner's decision, made through an ALJ, when the
28 determination is not based on legal error and is supported by

1 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995
2 (9th Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.
3 1999). "The [Commissioner's] determination that a plaintiff is
4 not disabled will be upheld if the findings of fact are supported
5 by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572
6 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence
7 is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d
8 1112, 1119 n.10 (9th Cir. 1975), but less than a preponderance.
9 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989);
10 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d
11 573, 576 (9th Cir. 1988). Substantial evidence "means such
12 evidence as a reasonable mind might accept as adequate to support
13 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)
14 (citations omitted). "[S]uch inferences and conclusions as the
15 [Commissioner] may reasonably draw from the evidence" will also be
16 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965).
17 On review, the court considers the record as a whole, not just the
18 evidence supporting the decision of the Commissioner. *Weetman v.*
19 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989) (quoting *Kornock v.*
20 *Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

21 It is the role of the trier of fact, not this court, to
22 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If
23 evidence supports more than one rational interpretation, the court
24 may not substitute its judgment for that of the Commissioner.
25 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
26 (9th Cir. 1984). Nevertheless, a decision supported by
27 substantial evidence will still be set aside if the proper legal
28 standards were not applied in weighing the evidence and making the

1 decision. *Browner v. Secretary of Health and Human Services*, 839
2 F.2d 432, 433 (9th Cir. 1987). Thus, if there is substantial
3 evidence to support the administrative findings, or if there is
4 conflicting evidence that will support a finding of either
5 disability or nondisability, the finding of the Commissioner is
6 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir.
7 1987).

8 ALJ'S FINDINGS

9 The ALJ found at step one that Plaintiff has not engaged in
10 substantial gainful activity since her alleged onset date. (AR
11 19). At step two, the ALJ determined that Plaintiff has the
12 severe impairments of migraine headaches, obesity, a depressive
13 disorder, not otherwise specified ("NOS"), and a personality
14 disorder, NOS, but that she does not have an impairment or
15 combination of impairments listed in or medically equal to one of
16 the Listings impairments. (AR 25). The ALJ indicated that
17 Plaintiff also has been treated for asthma and has been assessed
18 with a seizure disorder, but that these impairments did not limit
19 her ability to perform work activities and were therefore not
20 considered severe. (AR 25).

21 The ALJ concluded that Plaintiff has the residual functional
22 capacity ("RFC") to perform sedentary exertion work. (AR 28).
23 She found that Plaintiff was further restricted to simple
24 repetitive tasks, superficial contact with the public and no more
25 than simple changes in the work setting. (AR 28).

26 At step four of the sequential evaluation process, the ALJ
27 found that Plaintiff lacks the RFC to perform the exertion
28 requirements of her past relevant work. (AR 29). However, the

1 ALJ determined that, within the framework of the Medical-
2 Vocational Guidelines ("Grids") and based on the vocational
3 expert's testimony and Plaintiff's RFC, age, education, and work
4 experience, there were a significant number of jobs in the
5 national economy which she could perform despite her limitations.
6 (AR 29-30). Examples of such jobs included work as a charge
7 account clerk, a telephone quotation clerk, and an addresser. (AR
8 30). Accordingly, the ALJ determined at step five of the
9 sequential evaluation process that Plaintiff was not disabled
10 within the meaning of the Social Security Act. (AR 30-31).

11 ISSUES

12 Plaintiff contends that the Commissioner erred as a matter of
13 law. Specifically, she argues that:

14 1. Plaintiff is more limited from a psychological
15 standpoint than what was determined by the ALJ;

16 2. The ALJ erred by failing to include Plaintiff's moderate
17 limitation in her ability to maintain attention and concentration
18 in her hypothetical question to the vocational expert;

19 3. New evidence submitted to the Appeals Council, a
20 psychological evaluation completed by Dennis R. Pollack, Ph.D.,
21 provides additional evidence that she is more limited from a
22 psychological standpoint than what the ALJ determined;

23 4. Plaintiff is more limited from a physical standpoint
24 than what was determined by the ALJ; and

25 5. The ALJ erred by giving more weight to the opinion of a
26 nonexamining medical advisor than to Plaintiff's treating
27 physician, William Roth, M.D.

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1 This court must uphold the Commissioner's determination that
2 Plaintiff is not disabled if the Commissioner applied the proper
3 legal standards and there is substantial evidence in the record as
4 a whole to support the decision.

5 DISCUSSION

6 **A. Psychological Limitations**

7 Plaintiff contends that she is more limited from a
8 psychological standpoint than what was determined by the ALJ.
9 (Ct. Rec. 13, pp. 11-12). Plaintiff specifically asserts that the
10 ALJ erred by failing to find that she is moderately limited in her
11 ability to maintain attention and concentration for extended
12 periods. (Ct. Rec. 13, p. 12). In support of her argument in this
13 regard, Plaintiff directs the Court's attention to a form
14 completed by reviewing state agency physician, James E. Bailey,
15 Ph.D., on October 7, 2002 (AR 204-221), and evidence submitted
16 only to the Appeals Council, consisting of an April 21, 2004
17 psychological evaluation completed by Dennis R. Pollack, Ph.D. (AR
18 316-324).

19 The ALJ concluded that Plaintiff retains the mental RFC to
20 perform simple repetitive tasks, with superficial contact with the
21 public and no more than simple changes in the work setting. (AR
22 28, 31). In making this determination, the ALJ chiefly relied
23 upon the findings of examining medical professional Frank
24 Rosenkrans, Ph.D. (AR 21-28).

25 Dr. Rosenkrans, in conjunction with Darcie J. Smiley, M.S.,
26 and Donald Crawford, M.S., examined Plaintiff on August 1, 2002.
27 (AR 196-203). They diagnosed Plaintiff with a depressive

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1 disorder, NOS, and a personality disorder, NOS, with borderline
2 features, and gave her a Global Assessment of Functioning ("GAF")
3 score of 55.¹ They reported that Plaintiff's overall intellectual
4 functioning should not impair her ability to function in a normal
5 work environment, and that going back to work would likely
6 alleviate some of her depressive symptoms. (AR 22, 28, 202-203).

7 Dr. Pollack and Dr. Bailey each checked a box² indicating
8 that Plaintiff had a moderate limitation with her ability to
9 maintain attention and concentration for extended periods. (AR
10 218, 323). However, Dr. Bailey also marked in the same report a
11 box indicating that Plaintiff had only "mild" difficulties in
12 maintaining concentration, persistence or pace (AR 214), and in
13 the Ability To Do Work-Related Activities (Mental) completed by
14 Dr. Pollack, the definition of a "moderate" limitation is as
15 follows: "There is a moderate limitation in this area but the
16 individual is still able to function satisfactorily." (AR 323).

17 In any event, the ALJ did not reject the finding that
18 Plaintiff had a moderate limitation in her ability to maintain
19 attention and concentration for extended periods. The ALJ simply
20 considered this limitation, in addition to the opinions of the
21 other medical professionals of record, and found that Plaintiff
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24 ¹A GAF of 51 to 60 indicates moderate symptoms (e.g. flat affect and
25 circumstantial speech, occasional panic attacks), OR moderate difficulty in
26 social, occupational, or school function (e.g. few friends, conflicts with
peers or co-workers). DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS-IV 32
(4th ed. 1994).

27 ²A check-box form is entitled to little weight. *Crane v. Shalala*, 76
28 F.3d 251, 253 (9th Cir. 1996) (stating that the ALJ's rejection of a check-off
report that did not contain an explanation of the bases for the conclusions
made was permissible).

1 was limited to the performance of only simple, repetitive tasks as
2 a result of all of her limitations. (AR 28). A finding that is
3 not contradicted by the record evidence.

4 The Appeals Council considered Dr. Pollack's report and
5 determined that nothing in his report indicated that Plaintiff did
6 not have the capacity to perform simple repetitive work as found
7 by the ALJ. (AR 7). The Appeals Council additionally noted that
8 Dr. Pollack's report indicated that Plaintiff was taking and
9 passing college courses, "an endeavor that requires more attention
10 and concentration, greater criticism (marks) and greater
11 persistence than simple repetitive work." (AR 7). Accordingly,
12 as assessed by the Commissioner, and contrary to Plaintiff's
13 argument here, the Appeals Council concluded that Dr. Pollack's
14 opinion tended to confirm the ALJ's mental RFC finding or confirm
15 that Plaintiff was even more robust. (Ct. Rec. 16, pp. 12-13).

16 The ALJ's mental RFC finding is in accord with the weight of
17 the record evidence. The record does not support a more
18 restrictive finding than claimant having the ability to perform
19 simple repetitive tasks, with superficial contact with the public
20 and no more than simple changes in the work setting. (AR 28, 31).
21 Accordingly, the Commissioner did not err in so finding in this
22 case.

23 Since the undersigned finds that the ALJ's mental RFC finding
24 is supported by the record, it follows that the ALJ did not err by
25 failing to include additional limitations in her hypothetical
26 questions presented to the vocational expert. Accordingly,
27 Plaintiff's contention that the ALJ's incomplete hypothetical

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1 question to the vocational expert should not have constituted
2 competent evidence to support a finding that Plaintiff is not
3 disabled (Ct. Rec. 13, p. 12) is without merit.

4 **B. Physical Limitations**

5 Plaintiff contends that she is also more limited from a
6 physical standpoint than as determined by the ALJ in this case.
7 (Ct. Rec. 13, pp. 14-15). The ALJ concluded that Plaintiff has
8 the physical RFC to perform sedentary exertion work. (AR 28). In
9 making this determination, the ALJ rejected Dr. Roth's opinion
10 that Plaintiff is severely limited in performing work activities
11 due to her impairments. (AR 28-29).

12 In a disability proceeding, the treating physician's opinion
13 is given special weight because of his familiarity with the
14 claimant and her physical condition. *Fair v. Bowen*, 885 F.2d 597,
15 604-05 (9th Cir. 1989). To reject the treating physician's
16 opinion, the ALJ must state specific, legitimate reasons that are
17 supported by substantial evidence. *Flaten v. Secretary of Health*
18 *and Human Serv.*, 44 F.3d 1453, 1463 (9th Cir. 1995); *Fair*, 885
19 F.2d at 605. The Commissioner responds that the ALJ appropriately
20 evaluated the medical evidence of record, and properly rejected
21 Dr. Roth's opinion that Plaintiff could lift only 2 pounds or was
22 otherwise disabled. (Ct. Rec. 16, pp. 11-12). The undersigned
23 agrees.

24 Dr. Roth, Plaintiff's treating physician, completed physical
25 evaluations of Plaintiff on April 30, 2002, and August 25, 2003.
26 (AR 239-242). On each occasion, Dr. Roth checked a box indicating
27 that Plaintiff was severely limited, or unable to lift at least
28 two pounds or unable to stand and/or walk. (AR 240, 242). The

1 ALJ rejected these findings noting that Dr. Roth's opinions
2 appeared to be based upon Plaintiff's self-reports of headaches,
3 and she was not credible regarding the frequency and intensity of
4 such headaches. (AR 28). The ALJ properly evaluated the evidence
5 of record noting several inconsistencies with Plaintiff's
6 statements regarding her headaches.³ (AR 26-27). The evidence of
7 record also displayed information demonstrating medication abuse,
8 as well as rebound headaches as a result of this abuse. (AR 27,
9 29). The ALJ also indicated that Plaintiff had stated she has
10 experienced these headaches since her 1991 motor vehicle accident,
11 and she was apparently working with them at that time. (AR 28).
12 The Court finds it significant to note that Dr. Roth marked on
13 each physical evaluation form that Plaintiff would be unable to
14 perform at least half-time work for only 12 weeks and that
15 treatment was likely to restore her ability to perform at least
16 half-time work. (AR 240, 242). Furthermore, it is significant
17 that, despite her alleged impairments, Plaintiff was enrolled in
18 college, taking two hours of classes each day, and passing these
19 courses. (AR 7, 347-348).

20 At the hearing, Dr. Craig testified that migraine headaches
21 were Plaintiff's chief problem, there was no documented evidence
22 that she ever experienced seizures, and there was no abnormality
23 noted on neurological exam. (AR 337-338). He opined that
24 Plaintiff did not meet or equal a Listings impairment and that she

26 ³The ALJ noted that Plaintiff told Dr. Clark she had headaches every
27 two weeks lasting 48 hours; however, she told Dr. Roth, just three months
28 later, that she had no headaches. She later told Dr. Greeley she had three
headaches a week lasting 12 hours, and then told Dr. Wurst she was having
four headaches a week. By February 2003, she reported she was going two
weeks between headaches. (AR 27).

1 should be limited to sedentary work due to her migraine headaches.
2 (AR 338-340). Dr. Craig noted that DHE injections and other
3 medications gave her some relief. (AR 338). These opinions are
4 supported by other medical evidence of record, including some
5 reports of Dr. Roth.⁴ (AR 160).

6 It is the responsibility of the ALJ to determine credibility,
7 resolve conflicts in medical testimony and resolve ambiguities.
8 *Saelee v. Chater*, 94 F.3d 520, 522 (9th Cir. 1996). The Court
9 thus has a limited role in determining whether the ALJ's decision
10 is supported by substantial evidence and may not substitute its
11 own judgment for that of the ALJ even if it might justifiably have
12 reached a different result upon de novo review. 42 U.S.C. §
13 405(g). In any event, the Court finds that the ALJ thoroughly
14 analyzed the evidence of record (AR 20-29) and provided specific
15 and legitimate reasons for rejecting Dr. Roth's finding that
16 Plaintiff was severely limited. Accordingly, the ALJ's physical
17 RFC determination, that Plaintiff is limited to sedentary work, is
18 appropriate in this case.

19 CONCLUSION

20 Having reviewed the record and the ALJ's conclusions, this
21 Court finds that the ALJ's decision that Plaintiff is capable of
22 performing sedentary exertion work, while be restricted to simple
23 repetitive tasks, superficial contact with the public and no more
24 than simple changes in the work setting, including such jobs as a
25 charge account clerk, a telephone quotation clerk, and an

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27 ⁴Dr. Roth noted in August of 2001 that Plaintiff was doing really well,
28 had changed her outlook, had not had any headaches, had stopped taking
antidepressants, was really happy, was working, and was feeling good about
herself. (AR 160).

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2 addresser, jobs existing in sufficient numbers in the national
3 economy, is supported by substantial evidence and free of legal
4 error. Plaintiff is thus not disabled within the meaning of the
5 Social Security Act. Accordingly,

6 **IT IS ORDERED:**

7 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec.**
8 **12**) is **DENIED**.

9 2. Defendant's Motion for Summary Judgment (**Ct. Rec.**
10 **15**) is **GRANTED**.

11 3. The District Court Executive is directed to enter
12 judgment in favor of Defendant, file this Order, provide a copy to
13 counsel for Plaintiff and Defendant, and **CLOSE** this file.

14 **DATED** this 19th day of January, 2006.

15 s/Michael W. Leavitt
16 MICHAEL W. LEAVITT
17 UNITED STATES MAGISTRATE JUDGE
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